concurrence in the case of Merced Oil Mining Co. v. Patterson,[4] a decision which goes even further than Miller v. Chrisman. The earlier case held that conveyances by several locators of placer ground prior to discovery to one of their own number were effective in vesting their inchoate rights in the grantee. The Patterson case held that conveyances to a third party were equally valid.

It is to be noted that the California cases have gone further than the Federal case in so far as they have sanctioned the conveyance of more than twenty acres to an individual prior to discovery and thus held that he may by working a discovery, perfect a right to a greater area than the twenty acres to which the Federal statute[5] limits him in making an original location. The Land Department[6] declined to follow the California decisions to this extent and held that an association location so perfected by an individual after conveyance was void as to all but twenty acres. It also held that in affirming the Miller v. Chrisman case, the United States Supreme Court[7] did not intend to and did not adopt the doctrine laid down by the Supreme Court of California. To relieve the hardship which this ruling would have brought about in the oil fields where this practice had been customary, Congress passed a curative act[8] which permitted an individual transferee who subsequently made a discovery, to obtain a patent to an area in excess of 160 acres.

H. M. A.

Mining Law—Phosphate Locations—Lode or Placer—Jurisdiction of Land Department.—A question which has been puzzling the courts and the Land Department for some time has been the subject of three recent decisions.[1]

They involve deposits of phosphates situated on the public domain.[2] Whether these deposits should be located as lodes or placers has been the mooted point. They exist in the form of sedimentary beds or "blanket veins" and have a dip and strike conforming to the strata of the adjoining limestone, sandstone and shale beds. They are distinctly separated from these including beds. The first case noted[3] was a suit brought in pursuance of an adverse claim

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[4] (1908) 153 Cal. 624, 96 Pac. 90.
[5] Sec. 2331 U. S. Revised Statutes.
[6] Bakersfield Fuel & Oil Co., (1911), 39 L. D. 460.
[7] Chrisman v. Miller, (1905) 197 U. S. 313 (The appellate court did not make any adverse comment on the doctrine announced by the State Supreme Court).
[8] 36 Statutes at Large 1015.
[1] Duffield v. San Francisco Chemical Co. (Idaho), 198 Fed. 942; Harry Lode Mining Claim, 41 Land Decisions 403; San Francisco Chemical Co. v. Duffield (Wyoming), 201 Fed. 830.
[2] Because of their importance as soil fertilizers, phosphate lands have been included in recent conservation measures by Congress and the President empowered to withdraw these from entry. Act of June 25, 1910, 36 Stats. at L. 847.
[3] 198 Fed. 942.

filed by the lode claimant against an application for patent made in the land office by the placer claimants. The Federal District Court held that an action of this sort was purely possessory in its nature and that the question as to whether the deposit was a placer or lode, involved a determination of the character of the land which, according to the great weight of authority, at least, as between agricultural and mineral claimants, is a question exclusively within the jurisdiction of the Land Department in all cases where the matter is pending before the Department. The Court saw no valid reason for a different rule when the question arose between rival mineral claimants. The placer claimants prevailed because they had acquired possession of the ground first. The second decision noted [4] involved a deposit of a similar nature for which a lode claimant had filed its application for patent. The lands were thereafter withdrawn from entry under executive order in pursuance of the Act of Congress heretofore noted. The question arose as to whether a deposit of this nature should not properly have been located as a placer, in which event the lode application would be void and the land become subject to the withdrawal. The Land Department decided that the deposit was properly enterable as a lode, possessing as it did the characteristics of a lode deposit—being in place in the mass of the mountain and between well defined walls.

The third case [5] was decided by the Circuit Court of Appeals (8th circuit) and held substantially as did the Land Department, that these deposits are subject to location as lode claims and not as placer. The case also held, in direct conflict with the holding of the District Court in the other Duffield case above noted, that the Court had complete jurisdiction to determine this question even though it involved the character of the land and though the action was based on an adverse claim and consequently the matter was then pending in the land office and cited Webb v. American Asphaltum Co. [6] which presented a similar state of facts. The Court said, "We see no reason why when Congress required that the adverse claimant, to maintain his claim, must invoke the aid of a court of competent jurisdiction to determine the superior right as between the parties, it can be successfully said that the court, in making such inquiry is prohibited from determining whether the land is subject to location in the mode and manner claimed by one or both of the parties. . . What may be the binding force and effect of the judgment in this case, in that respect, upon the Land Department, we are not called upon to decide."

W. E. C.

Pleading—Amendment by Addition of New Party.—Lee v. McElroy, recently decided by the District Court of Appeal of California,[1] was an

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[4] 41 L. D. 403.
[5] 201 Fed. 830.
[6] 157 Fed. 203.
[1] 16 Cal. App. Dec. 442 (Decided March 5, 1913).